

**Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO and Genmar Electrical Contracting, Inc.** Case 29-CP-622

November 16, 2000

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND HURTGEN**

On November 12, 1999, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the administrative law judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions, and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local No. 3, International Brotherhood of Electrical Workers, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

*Sharon Chau, Esq.*, for the General Counsel.

*Norman Rothfeld, Esq.*, of New York, New York, for the Respondent.

*Scott Trivella and Denise Forte, Esqs. (Trivella & Forte)*, of New York, New York, for the Charging Party/Employer.

**DECISION**

**STATEMENT OF THE CASE**

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Brooklyn, New York, on April 26 and 27, 1999. The charges were filed on April 1, 1999, by Genmar Electrical Contracting, Inc. The complaint dated April 8, 1999, alleges that the Respondent, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, violated Section 8(b)(7)(A) of the National Labor Relations Act (the Act) by picketing the Charging Party's jobsite in order to force or require it to recognize or bargain with the Respondent as the representative of the unit or to force or require the unit to accept the Respondent as their bargaining representative.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent filed a timely answer in which the substantive allegations of the complaint were denied.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Charging Party, Genmar Electrical Contracting, Inc., located at 285 Broadway, Bethpage, New York, is engaged as an electrical contractor. With services in excess of \$50,000 for customers located in New York State, who have purchased goods and materials valued in excess of \$50,000 directly from buyers located outside the State of New York, the Company is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

The status of the United Construction Trades and Industrial Employees International Union as a labor organization within the meaning of Section 2(5) of the Act is contested.

**II. FACTS**

On March 31, 1999, the Respondent, Local Union No. 3, began picketing the Company, Genmar, at its jobsite at Cartoon Universe, 1540 Hylan Boulevard, Staten Island, New York. The picket signs contained the following message:

Electricians employed by Genmar, Join Local Union No. 3, IBEW for better wages and conditions, Local 3, IBEW, 158-11 Harry Van Arsdale Jr. Avenue, Flushing, New York.

Although Local 3 argues that its picketing was not intended to be for organizational or recognition purposes, its express message was clearly stated, i.e., electricians employed by Genmar join Local Union No. 3.

The Union engaged in this conduct even though the employees at Genmar had joined another union, United Construction Trades and Industrial Employees International Union (United). According to the General Counsel, Local 3 violated Section 8(b)(7)(A) of the Act, which prohibits a union to picket an employer for the purpose of forcing or requiring the employer to recognize the union even though the employer has already recognized another union. The Respondent has raised several defenses. Local 3 argues that United is not a labor organization, that Genmar cannot recognize United because the Company assisted the Union to obtain union cards and that the picketing did not have as its objective the "forcing or requiring" anybody to do anything.

**III. ANALYSIS**

Whether or not picketing is for organizational and or recognition purposes are a question of fact to be determined by the union's overall conduct. *Teamsters Local 618 (S&R Auto Parts)*, 193 NLRB 714 (1971). The events preceding the picketing, as well as those which accompany the picketing may determine the true object of the union's conduct. Here, Local 3 hardly disguised its conduct as informational or having any

other lawful objective. The picket signs were clearly directed at the employees with the message to join Local 3. Moreover, the message expressly referred to better wages and conditions. The Respondent certainly was not the collective-bargaining representative of the employees at Genmar. Instead, Genmar had already recognized United as the employees' bargaining representative. For example, John Keenan, a Genmar employee, testified that Local 3 was picketing at the Fulton Street worksite and the person holding the picketing sign spoke to him as follows (Tr. 280):

He came up to me in the morning and said, "Can I speak to you," and I said "Yes". He said, "I have to ask you this question," and he came out and said, "Would you like to join Local 3: I told him "No, I would not," and he said "All right, I have no choice, I had to ask you this question."

I just left it at that and he walked away.

The Respondent argues that the employee was merely asked to leave Genmar and join Local 3 without any coercion. But the overall conduct of the Respondent leaves no doubt that the purpose of its picketing was for organizational and or recognition purposes specifically directed at Genmar's employees. Under these circumstances, it is clear that the picketing was unlawful. *Retail Clerks Local 345 (Gem of Syracuse, Inc.)*, 145 NLRB 1168 (1964).

The next issue raised by the Respondent is that United is not a labor organization within the meaning of Section 2(5) of the Act, and that Genmar violated the Act when it recognized the Respondent union.

The record, however, does not support the Respondent's contention. David DeLucia was called as a witness who testified without contradiction that he was the president of United since January 1998. Andrew Talamo was the vice president and John Devine, the secretary. The organization adopted a constitution and bylaws, in January 1998 (GC Exh. 2). The constitution provides for the name of the organization in article 1, and in 12 numbered paragraphs it sets forth the objectives of United, including the principle "to aid workers in securing improved wages, hours, and working conditions." The document was prepared by DeLucia, reviewed by Stephen Goldblatt, attorney for the Respondent, and formally adopted by a group of four trustees. According to the testimony of DeLucia, United has 600 to 700 members and 35 to 40 bargaining agreements with various employers. United has such agreements with Edison Parking, National Car Rental, All City Interior and, of course, Genmar (GC Exhs. 3, 4, 5, 6).

DeLucia's testimony shows that the employees have been involved in the negotiations for contracts, they have attended union meetings to discuss their goals and expectations. United has represented employees with their grievances and been successful in getting an employee reinstated to his former job at Edison Parking.

The record does not reveal any impropriety in Genmar's recognition of United. DeLucia testified about the process of Genmar's recognition of United as the collective-bargaining representative for the employees. In October 1998 DeLucia visited Genmar's jobsite in the Bronx and spoke to the employ-

ees. He learned that they were not represented by any union. He encouraged them to join a union and assured them that he could obtain hospitalization benefits for them. On October 30, 1998, he distributed union authorization cards. Four employees signed union cards. DeLucia then visited another Genmar jobsite, known as the Footlocker store in Brooklyn, where approximately eight Genmar employees were working. After speaking to those employees about the benefits of a union, DeLucia handed out union authorization cards, which the employees signed in his presence (GC Exh. 7).

On November 2, 1998, DeLucia went to Genmar's corporate offices in Bethpage, New York, and spoke to its owner, Sal Filoteo. In the presence of two employees, DeLucia told Filoteo that he was a union official, that he had 11 signed union authorization cards from Genmar's employees. Filoteo examined the cards to assure that the signatures were those of his employees. They discussed employee benefits, especially health benefits. After 3 hours of bargaining, they reached an agreement. On the following day, November 3, 1998, DeLucia returned to Genmar's office to review the written terms of the contract with Filoteo. They each signed the contract, effective November 3, 1998, to November 2, 2001 (GC Exh. 6). Copies of the contract were subsequently mailed to the affected employees. The employees have paid their dues through the checkoff system. They elected Charles Albright as their union steward.

Section 2(5), the statutory definition of a labor organization, provides as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The record shows that United is an organization "in which employees participate" and one which exists for the purpose of "dealing with employers concerning" the employers' working conditions, including medical coverage or health benefits. The parties rely on *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962), to argue their respective positions. It is clear, however, that the failure of an employee group to have regularly scheduled meetings does not impair its standing as a labor organization within the meaning of the Act, nor the fact that its president does not receive any compensation or is employed in another capacity. DeLucia was employed as the assistant administrator of the Combined Welfare Fund. There is no evidence, however, that this activity impaired DeLucia's function as a union president. The Combined Welfare Fund has an administrator who has been ill. The Fund has several trustees and at least one other employee who is also referred to as assistant administrator. Contrary to the Respondent's suggestion, there is no evidence to show that DeLucia controls the Fund or that his function is anything more than that of an employee of the Fund. The mere fact that he "wears two hats," one as a union president and the other as an employee of the Welfare Fund, does not disqualify United as a labor organization. Contrary to

the Respondent's assertion, United has an office location and a telephone number.

The Respondent's final suggestion that the employer, Genmar, assisted United in its representation efforts is without merit. The record shows that on October 30, 1998, Elias Rivera, employed by Genmar at the Footlocker project on Fulton Street told the employees that someone from the Union wanted to talk to them and that they should listen to the union representative. Employee John Keenan, referring to Rivera as a foreman, testified about the conversation as follows (Tr. 282):

Well, we were working in the back part of the building and my foreman, Ely [Rivera] came up to us and told us that someone wanted to talk to us and then David [DeLucia] approached us and got us altogether in the back and told us about the union and what he could do for us.

He told us if we joined the union that—he asked us if we had any kind of medical benefits and we told him at the time no, we didn't have. He said if we joined this union he could offer us a good package in medical, he could give us days off and he told us a certain amount of days that he'd be able to give us.

He was going to be able to give us a raise based on a three-year contract a minimum of 50 cents per year with the first 50 cents starting immediately. That, if we joined, there would be a 401 that we would be able to enlist in if we so desired and then he gave us cards and asked us if we were willing to join that we would have to fill these cards out.

The record does not show whether Rivera was a supervisor within the meaning of the Act. Assuming arguendo that he was a supervisor, the record clearly shows that the employees made the decision to sign union authorization cards according to their own free will and based on the representation of the union representative. There is no evidence of any assistance by the employer to obtain the employees' signatures.

The Respondent's innuendoes and accusations about United's representation of Genmar's employees cannot justify its picketing of Genmar's jobsite. The record clearly shows that the Respondent picketed the jobsite for recognition or organizational purposes and to force Genmar to recognize Local 3 as the representative of its employees, even though the Company had lawfully recognized United as the representative of the employees.

#### CONCLUSIONS OF LAW

1. The Respondent, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. Genmar Electrical Contracting, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
3. United Construction Trades and Industrial Employees International Union, is a labor organization within the meaning of Section 2(5) of the Act.
4. By picketing Genmar at its jobsite located at Cartoon Universe, 1540 Hylan Boulevard, Staten Island, New York, in order to force or require Genmar to recognize or bargain with Respondent as the representative of the employees and to force or require the

employees to accept or select the Respondent as their collective bargaining representative, at a time when Genmar's had lawfully recognized another union, the Respondent violated Section 8(b)(7)(A) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it posts an appropriate remedial notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from picketing Genmar Electrical Construction Inc. at jobsites and other business locations with the object of forcing or requiring an employer to recognize or bargain with it as the bargaining agent of Genmar's employees in circumstances where the employer has lawfully recognized another labor organization and a question about representation cannot properly be raised under Section 9(c) of the Act.

2. Take the following affirmative action, necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Respondent, post at its business and meeting halls copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the attached notice, to be furnished by the Regional Director for Region 29, after being duly signed by an authorized representative of Respondent, shall be posted by the Respondent and maintained for 60 consecutive days, including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense, a copy of the notice to all current and former employees of Genmar employed at the Bethpage, New York jobsite at any time since March 31, 1999.

(b) Within 21 days after service by the Region file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>2</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT picket Genmar Electrical Construction Inc., at jobsites and other business locations with the object of forcing or requiring Genmar to recognize or bargain with us as the bargaining agent of Genmar's employees in circumstances where Genmar has lawfully recognized another labor organization as the representative of its employees.

LOCAL UNION NO. 3, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO